

**PROHIBITING GANG ACTIVITY**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jon J. Greiner**

House Sponsor: Curtis Oda

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**LONG TITLE**

**General Description:**

This bill amends the Criminal Code regarding loitering by groups that include gang members.

**Highlighted Provisions:**

This bill:

- ▶ provides that a peace officer may order a group to disperse if the group includes gang members and is in an area where loitering of groups that include gang members is prohibited by the local law enforcement agency;
- ▶ requires that the officer warn the group that failure to disperse is subject to arrest;
- ▶ requires chiefs of police and sheriffs to designate areas in their jurisdictions where police officers may require groups that include gang members to disperse;
- ▶ provides that failure to disperse upon the order of an officer is a class B misdemeanor, and a subsequent failure to disperse is a class B misdemeanor subject to a fine of \$100;
- ▶ provides that if, after being ordered to disperse, a member of the group loiters again within specified times and at specified places, the person is guilty of a class B misdemeanor and is subject to a fine of \$100;
- ▶ requires that officers receive training to ensure protection of the constitutional right of collective advocacy;
- ▶ requires that officers receive training on identification of gang members and





59 have engaged in a pattern of criminal gang activity.

60 (2) "Gang loitering" means a person:

61 (a) remains in a public place subject to enforcement of Section 76-9-803 after having  
62 been ordered by a peace officer to disperse from that public place in accordance with Section  
63 76-9-803; or

64 (b) (i) is present in a public place with or as part of a group of two or more persons that  
65 includes one or more persons a peace officer reasonably believes to be a member of a criminal  
66 street gang; and

67 (ii) is within sight or hearing of a location where a law enforcement officer issued an  
68 order to the person to disperse under Section 76-9-803 within the prior eight hours.

69 (3) "Pattern of criminal gang activity" means:

70 (a) committing, attempting to commit, conspiring to commit, or soliciting the  
71 commission of two or more predicate gang crimes within five years;

72 (b) the predicate gang crimes are:

73 (i) committed by two or more persons; or

74 (ii) committed by an individual at the direction of, or in association with a criminal  
75 street gang; and

76 (c) the criminal activity was committed with the specific intent to promote, further, or  
77 assist in any criminal conduct by members of the criminal street gang.

78 (4) (a) "Predicate gang crime" means any of the following offenses:

79 (i) any criminal violation of the following provisions:

80 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

81 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

82 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

83 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

84 (ii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;

85 (iii) Title 76, Chapter 5, Part 2, Criminal Homicide;

86 (iv) Sections 76-5-301 through 76-5-304, which address kidnapping and related  
87 offenses;

88 (v) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

89 (vi) Title 76, Chapter 6, Part 1, Property Destruction;

- 90           (vii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
- 91           (viii) Title 76, Chapter 6, Part 3, Robbery;
- 92           (ix) any felony offense under Title 76, Chapter 6, Part 4, Theft, except Sections
- 93 76-6-404.5, 76-6-405, 76-6-407, 76-6-408, 76-6-409, 76-6-409.1, 76-6-409.3, 76-6-409.6,
- 94 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;
- 95           (x) Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505, 76-6-507,
- 96 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517,
- 97 76-6-518, and 76-6-520;
- 98           (xi) Title 76, Chapter 6, Part 11, Identity Fraud Act;
- 99           (xii) Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections
- 100 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
- 101           (xiii) Section 76-8-508, which includes tampering with a witness;
- 102           (xiv) Section 76-8-508.3, which includes retaliation against a witness or victim;
- 103           (xv) Section 76-8-509, which includes extortion or bribery to dismiss a criminal
- 104 proceeding;
- 105           (xvi) Title 76, Chapter 10, Part 3, which addresses explosives;
- 106           (xvii) Title 76, Chapter 10, Part 5, Weapons;
- 107           (xviii) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- 108           (xix) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 109           (xx) Section 76-10-1801, which addresses communications fraud;
- 110           (xxi) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction
- 111 Reporting Act;
- 112           (xxii) Section 76-10-2002, which addresses burglary of a research facility; and
- 113           (xxiii) Title 41, Chapter 1a, Motor Vehicle Act:
- 114           (A) Section 41-1a-1313, regarding possession of a motor vehicle without an
- 115 identification number;
- 116           (B) Section 41-1a-1315, regarding false evidence of title and registration;
- 117           (C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;
- 118           (D) Section 41-1a-1317, regarding selling or buying a motor vehicle without an
- 119 identification number; and
- 120           (E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number.

121 (b) "Predicate gang crime" also includes:  
122 (i) any state or federal criminal offense that by its nature involves a substantial risk that  
123 physical force may be used against another in the course of committing the offense; and  
124 (ii) any felony violation of a criminal statute of any other state, the United States, or  
125 any district, possession, or territory of the United States which would constitute any offense in  
126 Subsection (4)(a) if committed in this state.

127 (5) (a) "Public place" means any location or structure to which the public or a  
128 substantial group of the public has access and includes:  
129 (i) a sidewalk, street, or highway;  
130 (ii) a public park, public recreation facility, or any other area open to the public;  
131 (iii) a shopping mall, sports facility, stadium, arena, theater, movie house, or  
132 playhouse, or the parking lot or structure adjacent any of these; and  
133 (iv) the common areas of schools, hospitals, apartment houses, office buildings,  
134 transport facilities, and businesses.

135 (b) "Public place" includes the lobbies, hallways, elevators, restaurants and other  
136 dining areas, and restrooms of any of the locations or structures under Subsection (5)(a).

137 Section 3. Section **76-9-803** is enacted to read:

138 **76-9-803. Gang loitering -- Failure to disperse -- Penalties.**

139 (1) When a law enforcement officer observes a person whom the officer reasonably  
140 believes to be a member of a criminal street gang in the presence of one or more other persons  
141 in any public place where gang loitering is prohibited under Section 76-9-805, the police  
142 officer shall:

143 (a) inform all the persons that they are within an area in which loitering by a group  
144 containing one or more criminal street gang members is prohibited;

145 (b) order all the persons in the group to disperse and remove themselves from within  
146 sight and hearing of the location where the officer issues the order to disperse; and

147 (c) inform the persons that any person in the group will be subject to arrest if the  
148 person:

149 (i) fails to promptly obey the order to disperse; or

150 (ii) engages in gang loitering at or within the sight or hearing of the location where the  
151 officer issued the order to disperse.

152 (2) The officer under Subsection (1) shall also advise the persons the officer is  
153 directing to disperse that each of the persons directed to disperse is subject to arrest if the  
154 person is again, within eight hours after the current order to disperse is made:

155 (a) present in a public place with a group that includes one or more persons a peace  
156 officer reasonably believes to be a member of a criminal street gang; and

157 (b) within sight or hearing of the location where the law enforcement officer is  
158 currently issuing the order to disperse.

159 Section 4. Section **76-9-804** is enacted to read:

160 **76-9-804. Gang loitering -- Penalties.**

161 (1) (a) Failure to comply with an order issued under Subsection 76-9-803(1)(b) to  
162 disperse is a class B misdemeanor of gang loitering.

163 (b) Any second and subsequent violation of Subsection (1)(a) is a class B misdemeanor  
164 of gang loitering and is subject to a fine of not less than \$100, unless the court finds mitigating  
165 circumstances justifying lesser punishment and makes that finding a part of the court record.

166 (2) (a) Gang loitering is a class B misdemeanor if a person engages in gang loitering:

167 (i) within eight hours of having been previously ordered to disperse under Section  
168 76-9-803, regardless of whether the person complied with that order; and

169 (ii) within sight or hearing of the location where a law enforcement officer issued the  
170 prior order to disperse under Section 76-9-803.

171 (b) A violation of Subsection (2)(a) is subject to a fine of not less than \$100, unless the  
172 court finds mitigating circumstances justifying lesser punishment and makes that finding a part  
173 of the court record.

174 Section 5. Section **76-9-805** is enacted to read:

175 **76-9-805. Designation of areas where orders to disperse are authorized and gang**  
176 **loitering is prohibited.**

177 (1) Sheriffs and chiefs of police shall each, within their respective jurisdictions,  
178 designate by written directive the areas within their jurisdictions that they have determined are  
179 subject to the enforcement of Section 76-9-803 because criminal street gangs have been able to  
180 or are attempting to:

181 (a) establish control over these identifiable areas;

182 (b) intimidate others from entering those areas; or

183 (c) conceal illegal activities.

184 (2) (a) Prior to designating areas subject to enforcement under Section 76-9-803, the  
185 sheriff or chief of police shall consult, as appropriate, with persons who are knowledgeable  
186 about the effects of gang activity in areas where Section 76-9-803 may be enforced.

187 (b) Persons consulted under Subsection (2)(a) may include:

188 (i) members of local law enforcement agencies who have training or experience related  
189 to criminal street gangs;

190 (ii) other agency personnel with particular knowledge of gang activities in the proposed  
191 designated area;

192 (iii) elected and appointed officials of the area where the proposed designated area is  
193 located; and

194 (iv) representatives of community-based organizations.

195 (3) The sheriff or chief of police shall develop and implement procedures for periodic  
196 review and update of area designations made under Subsection (1).

197 Section 6. Section **76-9-806** is enacted to read:

198 **76-9-806. Protection of constitutional rights.**

199 (1) This section does not affect or limit any individual's constitutional right to engage  
200 in collective advocacy activities that are protected by the Constitution or laws of this state or by  
201 the Constitution or laws of the United States.

202 (2) The sheriff or chief of police shall issue a written directive to all agency employees  
203 that provides information on preventing the enforcement of Section 76-9-803 against persons  
204 who are engaged in constitutionally protected collective advocacy activities.

205 Section 7. Section **76-9-807** is enacted to read:

206 **76-9-807. Training for participating law enforcement officers.**

207 The sheriff or chief of police implementing this part shall ensure that all officers  
208 charged with enforcing this part successfully complete appropriate training on identification of  
209 gang members and criminal street gangs.

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**Legislative Review Note**  
as of 1-22-08 1:24 PM

**Office of Legislative Research and General Counsel**



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**S.B. 75 - Prohibiting Gang Activity**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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